

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No. 37 of 2016

**Global Leisure and Recreation
Pvt. Ltd. & Anr.**

.... Appellants

Vs.

Ms. Punita Khatter Anr.

.... Respondents

Present: Mr. Rakesh Khanna with Mr. Nitin Gupta, Advocate for the Appellants

Mr. Krishnandu Datta, Advocate with Mr. Ankur, Mr. Shantanu Parasher and Ms. Megha Agarwal, Advocates for the respondents

ORDER

20.12.2016 This Company Appeal has been preferred by the Appellants Global Leisure and Recreation Pvt. Ltd. & Anr. against Order dated 21st November 2016 passed in C.A.No. 49/C-1/2016 in C.P.No. 03/ND/2016 by National Company Law Tribunal, New Delhi Bench. By the impugned order the Company Appeal filed by appellants/respondents under Section 8 of the Arbitration and Conciliation Act 1996 has been dismissed.

We have heard learned counsel for the appellant. Pursuant to advance notice, Mr. Krishnandu Datta, Advocate has appeared on behalf of the respondent(s).

From a bare perusal of the record we find that the respondents filed Company Petition under old Sections 397, 398, 402, 403 and 237 of the Companies Act 1956 (the present Sections 241 & 242 of the Companies Act

2013) and while alleging oppression and mismanagement made prayer, as noticed and quoted at paragraph 14 of the impugned order. Learned counsel appearing on behalf of the appellants while referring Section 8 of the Arbitration and Conciliation Act 1996 contended that the matter in dispute in fact such in nature that it should have been referred to the Arbitrator, there being a provision of arbitration in the Articles of Association. On the other hand according to learned counsel for the respondents, whatever the grievance has been made relates to oppression and mismanagement and does not call for referring the matter to the arbitrator who has no jurisdiction to decide such issue.

In the present case we find that the respondents/petitioners has raised grievance relating to delay in filing annual return, non-compliance of auditing within stipulated period, in action on the part of the company in holding the Board's meeting etc. Those are the questions, which cannot be determined by an Arbitrator and whether such grievance constitute oppression and mismanagement can be decided only by the Tribunal under Sections 241 and 242 of the Companies Act 2013.

Learned counsel appearing on behalf of the appellants contended that the respondent/Petitioner was the Managing Director for 20 years and oppression and mismanagement if any, has been committed under her Managing directorship. If that be so, it is always open to the parties to bring the aforesaid fact to the notice of the Tribunal which may decide the question whether there is any oppression or mismanagement on the part of the respondent company or by any other party. We do not want to answer the

question at this stage as it is a matter to be decided by the Tribunal after hearing the parties on the basis of evidence on record.

In view of the reasons recorded above, we are not inclined to interfere with the impugned order dated 21st November 2016. The appeal is accordingly dismissed. No cost.

However, we may make it clear that we have not decided the case on merit which is to be decided by the Tribunal. It is also open to the aggrieved party to move before the appropriate Forum and for appointment of Arbitrator, if there is any other dispute and is permitted/agreed upon in an agreement.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)